



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Housing and Urban Development
Employee - Administrative Leave
File: B-156287
Date: December 11, 1987

DIGEST

This Office would not object to Department of Housing and Urban Development exercising administrative discretion in authorizing short periods of administrative leave for employee to participate in research project at Public Health Service, National Institutes of Health (NIH). Although it is generally not within the discretion of an agency to grant administrative leave for a lengthy period of time, each agency has the responsibility for determining situations in which administrative leave will be granted for brief absences.

DECISION

The Director, Personnel Systems and Payroll Division, U.S. Department of Housing and Urban Development (HUD), requests our opinion on whether an employee of HUD may be granted administrative leave by the agency to participate approximately 3 days a month in a cancer research effort being conducted by the National Cancer Institute of the Public Health Service, National Institutes of Health (NIH). We find that the granting of brief periods of administrative leave each month to this Federal employee is consistent with the available guidance for granting administrative leave to employees.

Dr. Peter A. Thompson, the employee's attending physician with the National Cancer Institute, reports that the employee is engaged in a scientific protocol being run by the National Cancer Institute to investigate breast cancer in men. This is a very rare clinical entity and the employee's consent to participate in this study is, according to Dr. Thompson, "a great service to the scientific community in general and to other patients with male breast cancer specifically." As a result, on behalf of the National Cancer Institute, Dr. Thompson concludes that the brief periods of time each month spent by the employee in

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the therapeutic trial should not be charged against him as sick leave but rather considered part of a cooperative effort between HUD and the NIH. In addition, the employee's immediate supervisor has determined that the employee's performance would benefit from his participation in the protocol and therefore recommends that the employee be granted short periods of administrative leave, anticipated to be about 3 days a month during the next year's phase of treatment. However, the agency is concerned that a decision of this Office, B-156287, June 26, 1974, precludes granting administrative leave to employees participating in a voluntary humanitarian project sponsored by a non-profit organization. As a result, the agency requests a determination regarding the appropriateness of granting administrative leave to the employee, and also asks whether administrative leave in this case may be granted retroactively.

There is no general statutory authority for what is referred to as administrative leave, that is, an excused absence from duty without loss of pay and without charge to other paid leave. Nevertheless, it has been recognized that, in the absence of specific statutory authority, the head of an agency may, in certain situations, excuse an employee for brief periods of time without a charge to leave or loss of pay. Some of the more common situations in which agencies generally excuse absence without a charge to leave are discussed in the Federal Personnel Manual (FPM) Supplement 990-2, Book 630, Subchapter S11. See also 5 C.F.R. § 610.304 (1986), which provides certain standards for excused absences by administrative order for Government employees paid at a daily, hourly or piece work rate. None of the examples, however, in either FPM Supplement or 5 C.F.R. § 610.305 is applicable here.

Each agency has the responsibility for determining situations in which administrative leave will be granted. 54 Comp. Gen. 706 (1975); 53 Comp. Gen. 582 (1974). However, our decisions and OPM's guidelines limit an agency's discretion to grant administrative leave to situations involving brief absences. Elmer DeRitter, Jr., 61 Comp. Gen. 652 (1982). Where absences are for a lengthy period of time, a grant of administrative leave is not appropriate unless the absence is in connection with furthering a function of the agency. 63 Comp. Gen. 542, 544 (1984); DeRitter, supra, 61 Comp. Gen. at 653. Thus, in the absence of statutory authority, we would not approve a proposal under which absences would be granted for extended periods

of time. See also 44 Comp. Gen. 333 (1964); 53 Comp. Gen. 1054 (1974); and Frederick W. Merkle, Jr., B-200015, Nov. 17, 1980. In the case cited by the agency here, B-156287, June 26, 1974, we held that an employee could not be granted 6 weeks administrative leave for the purpose of engaging in voluntary humanitarian work for a privately supported organization. Although we noted that absence from duty for the purpose of working voluntarily for a private relief organization was not one of the circumstances covered by existing authorities, our conclusion in that case was based on a finding that a single period as long as 6 weeks could not be considered a "brief period" within the meaning of all available guidance for reviewing administrative leave requests.

The record in this employee's case demonstrates that his unfortunate affliction makes him uniquely situated to participate for brief periods in a therapeutic trial that both his agency, HUD, and the NIH readily agree is a humanitarian effort to advance the health sciences. As a result, we believe that the HUD's decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests. The briefness of the period of administrative leave each month distinguishes the employee's case from our earlier decision in B-156287, June 26, 1974. Accordingly, we hold that the employee may be granted administrative leave in the circumstances of this case.

Finally, since employing agencies are vested with a discretionary authority to determine the basis upon which an employee is officially excusable, either before or after his absence, without charge to his annual or sick leave, we find that the retroactive change from sick leave to administrative leave for the brief periods covering the employee's participation in the National Cancer Institute's therapeutic trial would be proper. 53 Comp. Gen. 582, supra.

Milton J. Jordan

for

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of the United States